

Nos. 14-1135, 14-1140

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**UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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**CONSOLIDATED COMMUNICATIONS, d/b/a ILLINOIS  
CONSOLIDATED TELEPHONE COMPANY**

**Petitioner/Cross-Respondent**

**v.**

**NATIONAL LABOR RELATIONS BOARD**

**Respondent/Cross-Petitioner**

**and**

**INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,  
AFL-CIO, LOCAL 702**

**Intervenor**

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**ON PETITION FOR REVIEW AND CROSS-APPLICATION  
FOR ENFORCEMENT OF AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD**

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**PRINCIPAL BRIEF OF INTERVENOR  
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,  
AFL-CIO, LOCAL 702**

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**Intervenor**

**CERTIFICATE AS TO THE PARTIES, RULINGS, AND RELATED CASES**

Pursuant to Circuit Rule 28(a)(1), counsel for the International Brotherhood of Electrical Workers, AFL-CIO, Local 702, certifies the following:

**A. Parties and Amici**

The Board is Respondent/Cross-Petition before the Court. Consolidated Communications is the Petitioner/Cross-Respondent before this Court and was the Respondent before the Board. International Brotherhood of Electrical Workers,

Local 702 is an Intervenor before the Court, and was the Charging Party before the Board. There are no amici.

### **B. Rulings Under Review**

This case is before the Court on Consolidated's petition to review a Board Order issued on July 3, 2014, and reported at 360 NLRB No. 140. The Board seeks enforcement of that Order against Consolidated.

### **C. Related Cases**

The case on review was not previously before this Court and or any other court. Board counsel is unaware of any related cases pending in this Court or any other court.

/s/ Christopher N. Grant

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**INTERVENOR'S CORPORATE DISCLOSURE STATEMENT**

Pursuant to Rules 26.1 and 28(a)(1) of the Federal Rules of Appellate Procedure, and to enable the Judges of the Court to evaluate possible disqualification or recusal, the undersigned counsel states that Intervenor International Brotherhood of Electrical Workers, Local 702 is an unincorporated association. It does not have stock. Local 702 is a labor organization and represents employees in the electrical and communications industry in disputes with their employers.



**GLOSSARY**

Act	National Labor Relations Act
ALJ	Administrative Law Judge
The Board or NLRB	National Labor Relations Board
The Company or Consolidated	Consolidated Communications d/b/a Illinois Consolidated Telephone Company
Union or Local 702	International Brotherhood of Electrical Workers, Local 702

## **JURISDICTIONAL STATEMENT**

The Union agrees with the Jurisdictional Statement set forth in the NLRB's Brief.

## **RELEVANT STATUTORY PROVISIONS**

The Union agrees with the relevant statutory provisions set forth in the NLRB's Brief.

## **STATEMENT OF THE ISSUES**

The Union agrees with the statement of issues made by the NLRB.

## **STATEMENT OF THE CASE**

The Union agrees with the Statement of the Case as set forth in the NLRB's Brief. The Union provides additional facts below.

### **A. The Strike and Instructions to Picketers.**

The Union initiated a strike against the Company at around 10:00 p.m., Thursday, December 6, 2013. (G.C. Ex. 18 at ¶ 18.) The Union picketed most of the Company's facilities, including the Taylorville Garage, Corporate, and the Rutledge facility. (Tr. 38-39.)

On Monday, December 10, Business Manager Steve Hughart and Business Representative Brad Beisner visited the Rutledge facility early in the morning. (Tr. 42.) Among other things, they told strikers about ambulatory picketing. (Tr. 593, 767.) They explained that, if strikers saw a management employee driving a

Company vehicle, then they could follow it, and if the manager went to a commercial property, they could picket there while the manager was working there. (Tr. 43.)

**B. The Company's Use of Huffmaster Crisis Response as Security.**

The Company hired Huffmaster Crisis Response to provide security during the strike. (G.C. Ex. 20.) Huffmaster representatives told non-striking employees that guards would help if they were in any unsafe situation. (Tr. 1083.) The guards escorted non-striking employees into and out of the Rutledge facility. (Tr. 593.) They also videotaped cars entering and exiting. (Er. Ex. 1.)<sup>1</sup>

Nonstrikers were given a set of procedures for what to do in certain circumstances, for instance, when exiting through a picket line, when their car was damaged, or when they were followed. (Tr. 487, G.C. Ex. 21.) The Company expected them to adhere to them. (Tr. 489.)

**C. Mike Maxwell**

Maxwell picketed at the Taylorville Garage on Saturday, December 8. (Tr. 496.) He first noticed the van driven by Leon Flood when it exited the garage. (Tr. 498.) Maxwell was picketing with others, slowly, single file, headed north across the driveway. (Tr. 499-500, 502, 504.)

Flood slowed at the picket line and then started moving through it. (Tr.

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<sup>1</sup> The parties agreed at the hearing that the time stamps on the video, taken by Huffmaster security guards, may not accurately reflect real time.

500.) Maxwell was in front of the van, walking, and was hit. (Tr. 500, 504-505.) His body bent in towards the van, and he was pushed off his feet. (Tr. 500-501.) He could have put his arm on the van to brace himself. (Tr. 500-501.) Maxwell scrambled to get out of the driver's way. (Tr. 501.) The van moved forward and hit Maxwell again pushing him toward the driver's side. (Tr. 501.) Maxwell gave Flood the finger. (Tr. 501.) He might have also said, "Fuck you." (Tr. 501.)

Flood wrote in an incident report that per instructions from Doug Houchin, a manager, he stopped at the picket line, waited a few seconds, and then inched forward. (G.C. Ex. 12b.) Flood claims that, during this process, Maxwell put his elbow on the hood and leaned against the van. (G.C. Ex. 12b.)

Frank Fetchak was sitting in the front passenger seat. (Tr. 929.) He testified that Maxwell was moving and that Flood inched forward. (Tr. 932, 939-940, 946-947.) Fetchak did not think Maxwell leaned against the van for "very long" and guessed 15 seconds. (Tr. 935.) He admitted that one reason why Maxwell put his elbow on the van could have been because Maxwell was hit on the hip. (Tr. 952.)

#### **D. Conditions Outside the Rutledge Facility During the Strike.**

The Company's Rutledge facility is on 17<sup>th</sup> Street, on the east side. (G.C. Ex. 10b; Tr. 52) Picketers parked on both sides of the street, north and south of the driveway. (Tr. 594, 1089, 1129, 1142, 1161, 1193.) Some strikers walked across 17<sup>th</sup> Street to get to the picket line. (Tr. 1093, 1160-1161.) Strikers also walked

across the street to their cars to get things, to keep warm, and to eat. (Tr. 64, 594, 1142-1143.) The Union's picketing was loud. (Tr. 71-72, 183-184.) People also drove by and honked in support. (Tr. 64-65, 595.)

On Monday morning, at around 8:00 a.m., Mattoon Chief of Police Jeff Branson visited the Rutledge facility in response to calls from Company manager Mike Croy, complaining about the picketing. (Tr. 535, 539, 569.) The Chief asked the strikers to get out of the street and they complied. (Tr. 540-541, 543.) The Chief did not see any instances where cars were not able to make entry or exit from Rutledge with assistance from Huffmaster guards. (Tr. 533-534.)

17<sup>th</sup> Street is normally one lane each way; but, during the strike, it was reduced to one lane combined. (Tr. 479, 1081-1082.) Chief Branson testified that a safe speed for driving was very slow. (Tr. 569.) Jonell Rich agreed that 17<sup>th</sup> Street was like a grocery store parking lot, where people are coming and going and you drive slowly because you do not want to hit someone coming in or out of a car even if you do not see them. (Tr. 1161-1162.)

## **E. Pat Hudson and Brenda Weaver**

### **1. The Sarah Greider Incident**

On Monday morning, December 10, Hudson and Weaver were both at the picket line at Rutledge. (Tr. 768.) At around 10:00 a.m., they decided to go to Corporate to picket. (Tr. 608.) Before leaving, Weaver told Hudson that her

husband had seen some Company employees parked by Lawson Park and suggested that they see if the replacements were working. (Tr. 595, 608.) Hudson agreed. (Tr. 770.)

Hudson and Weaver drove separately. (Tr. 769-770.) They pulled out and each drove north on 17<sup>th</sup> Street, past picketers standing by the driveway. (Er. Ex. 1 at 10:03:41.) Hudson was in front and Weaver behind. (Tr. 608-609, 769-770.)

Sarah Greider turned out of the Rutledge parking lot, behind Hudson. (Tr. 1054.) She claims that Hudson stopped and started five or six times, (Tr. 1054, 1057, 1079), and that she was blocked by Hudson, with Weaver behind her, for about one minute, (Tr. 1055, 1057). When Greider reached the first entrance to Pilson's, a nearby car dealership, she turned off, and proceeded through town by a different route. (Tr. 1055, 1058-1059; Er. Ex. 7.) When she later filled out a Huffmaster report, she also wrote that Hudson and Weaver passed her on Charleston Avenue by the Cross County Mall. (Tr. 1074; G.C. Ex. 16.)

Video shows Greider's car at the picket line. (Er. Ex. 1 at 10:03:41.) A Huffmaster guard is in front of her car. (Tr. 1067.) The video shows Hudson passing the driveway going north on 17<sup>th</sup> Street. (Er. Ex. 1 at 10:03:41.) The guard then steps into the street and signals the next car – Weaver – to stop by putting his hand up. (Tr. 309-310.) Greider pulls out and turns right, behind Hudson. (Tr. 311.) The video then shows the guard motioning to Weaver to

proceed. (Er. Ex. 1 at 10:03:47.) Hudson is driving slowly, but not stopping and starting. (Id. at 10:03:50-:57; Tr. 314, 1069.)

Greider called her husband on her cellphone before she even started her car and kept him on the phone the entire time. (Tr. 1054, 1057, 1088.) As soon as she saw Weaver's car, she told her husband, "You are not going to believe what these bitches are doing to me." (Tr. 1079.)

Jonell Rich testified that she saw Hudson driving on 17<sup>th</sup> Street, that Greider pulled out behind Hudson, and that they were going north on 17<sup>th</sup> Street "very slow." (Tr. 1120.) Rich first testified that Hudson's brake lights went on more than once but that she did not know if Hudson came to a complete stop. (Tr. 1119-1120.). She subsequently changed her testimony and said that Hudson stopped twice. (Tr. 1134-1136.)

## **2. The Troy Conley Incident**

After leaving the Rutledge facility, Hudson and Weaver drove by Lawson Park. (Tr. 608.) They did not see any Company vehicles there. (Tr. 609, 773.) They then headed towards Corporate. (Tr. 773-774.) Hudson was ahead of Weaver. (Tr. 773.)

At Charleston Avenue, also called Highway 16, Hudson saw a Company truck going east. (Tr. 774.) Hudson decided to follow it. (Tr. 774.) Hudson wanted to see if it was going to a commercial site, so she could report it to the

Union to set up a picket. (Tr. 784.) Weaver did not immediately realize why Hudson had turned right (because Corporate was to the left), but decided to stay with her. (Tr. 610, 772, 774.)

Hudson followed the Company truck, and Weaver followed Hudson, east on Highway 16, past the Mall, past Interstate 57, and to Lerna Road, where Hudson caught up with the truck. (Tr. 776-778.) Weaver eventually saw the Company truck and realized that Hudson was following it. (Tr. 611.)

Near the county airport, Weaver passed Hudson and the Company truck on the left and pulled into the right lane in front of the Company truck. (Tr. 613-614, 655, 779; G.C. Ex. 10c) Weaver passed like normal, driving at around the speed limit. (Tr. 619, 659, 697, 782.) She did not brake when she pulled in front of him. (Tr. 615.) Weaver explained that she passed Hudson and pulled alongside the Company truck because she wanted to see who was driving it, so if she and Hudson followed it to a site where they could picket, she could notify the Union. (Tr. 628.) Weaver recognized Troy Conley in the truck. (Tr. 614.)

Hudson waited for several cars to pass and then, by the Hospital or slightly east of it, followed Weaver around the Company truck. (Tr. 616, 780, 848.) Hudson's intent had been to follow the Company truck; but, when Weaver passed Conley, she changed her mind. (Tr. 834-835.) Hudson did not know why Weaver



had passed Conley or what Weaver's intentions were, and she did not have a phone and wanted to stay with Weaver. (Tr. 765, 779, 835.)

Shortly after Hudson passed Conley, Weaver and Hudson saw the Company truck turn off the highway onto a country road. (Tr. 616, 660, 780.) Hudson pulled off at the next road and turned around. (Tr. 629, 780.) Weaver followed Hudson and they drove to Corporate. (Tr. 616, 629, 666, 839.) Hudson and Weaver did not try to follow Conley because it did not appear that he was going to a commercial job and there was not really a way to turn and get back to him. (Tr. 629, 780-781, 785, 839.)

Weaver denied cutting off Conley, and did not see Hudson swerve or cut him off. (Tr. 617.) Hudson also denied slowing down or cutting Conley off. (Tr. 786, 851.)

Conley testified that he first noticed Weaver about three-quarters of a mile past the BP Station near Miller Road. (Tr. 864, 874-875.) He said he heard honking and Weaver passed him, signaled, and got in the right lane in front of him. (Tr. 864, 873.) Weaver did not delay beside him. (Tr. 876.) When she pulled in front of him, she did so at a safe distance and did not swerve or slam on her brakes. (Tr. 877.) Up to one minute later, Hudson proceeded to pass Conley and paralleled Weaver. (Tr. 865, 877.) According to Conley, Hudson and Weaver then slowed down. (Tr. 865-866.) He admitted that he may have simply let off his accelerator.

(Tr. 882.) He also admitted that he did not know what speed Hudson and Weaver were driving at this point and that they may have been driving the speed limit. (Tr. 884.)

Conley shifted over to the left lane behind Hudson to see if he could pass her and then shifted back to the right behind Weaver. (Tr. 866, 887-889.) As Conley remembered it, Hudson pulled in front of Weaver, in the right lane, and three cars passed them in the left lane. (Tr. 866, 890.) Conley then shifted into the left lane and tried passing Weaver and Hudson a second time. (Tr. 866, 890.) He testified that, as he approached Weaver's car, Hudson pulled into the left lane in front of him and slowed. (Tr. 866, 890.) Conley said he had to hit his brakes, but did not need to slam them. (Tr. 891.) In Conley's opinion, the distance for Hudson to move into the left lane was not safe; but, he admitted that Hudson could have thought it was safe and that she could have had her blinker on. (Tr. 891-892.) Conley also stated that he was not close to having an accident. (Tr. 893.)

Larry Diggs was riding with Conley. (Tr. 955.) He testified that when the first car (Weaver) pulled in front of them, it did not really cut them off. (Tr. 962.) The second car (Hudson) then pulled alongside the Company truck and continued ahead. (Tr. 964.) According to Diggs, Hudson and Weaver were driving slower than other cars, but he admitted that they could have been driving the speed limit. (Tr. 957, 964.) He could not speculate as to how long the second car was parallel

to the first car or for how long Conley was behind them. (Tr. 964-965.) Hudson then pulled in front of Weaver, and several cars passed them on the left. (Tr. 965.) Diggs testified that Conley tried to follow the cars, but Hudson pulled back into the passing lane. (Tr. 957, 966.) At that point, Conley had not even begun to pass Weaver's car and there was at least a car length's distance between Conley and Hudson. (Tr. 967.) Diggs admitted there was no danger of Conley hitting Hudson's car. (Tr. 967-968.)

### **3. The Kurt Rankin Incident**

Sometime between 11:00 and noon, Hudson decided to drive back to Rutledge to honk in support of the strikers. (Tr. 788, 841.) Weaver was in Hudson's car along with Janece Neunaber. (Tr. 620, 841.) They drove south on 17<sup>th</sup> Street, past the strikers at Rutledge, turned around, and headed back north to pass them again and honk some more. (Tr. 620-621, 788-789.) As Hudson was driving past the driveway, Manager Kurt Rankin pulled out of the Rutledge facility and behind her car. (Tr. 789.) Weaver was in the back seat and said Rankin's going to hit you. (Tr. 622, 789.) Hudson saw that Rankin was on her tail and could see the front grill of Rankin's truck in her mirror. (Tr. 789, 842.) Hudson kind of panicked. (Tr. 789.) Rankin proceeded to pass Hudson on the left. (Tr. 622, 790, 792, 842.) He then pulled in front of Hudson and hit his breaks. (Tr.

623, 790.) Hudson was scared and immediately turned right on Annis or Bell Street. (Tr. 790-791.)

Hudson was driving slowly because cars were parked along the street and there were picketers nearby. (Tr. 793.) She explained that, when driving on a narrow road like 17<sup>th</sup> Street, she drives in the middle of the road until she comes to an approaching car and then she pulls to the side. (Tr. 852.) Hudson denied stopping and starting, trying to prevent Rankin from passing her, and swerving toward him. (Tr. 849.)

Weaver explained that Hudson was driving cautiously. (Tr. 624.) There were a lot of people around and walking back and forth and cars were partially parked on the road. (Tr. 624-625.) Weaver stated that Hudson was continuously going. (Tr. 625, 676.) She also stated that Hudson did not move to the left when Rankin passed Hudson. (Tr. 628.)

At the hearing, Rankin testified that, as he pulled up to the guard at the exit, he saw Hudson's car parked on the side of the road and saw strikers motioning to Hudson. (Tr. 455-457, 463-464, 466.) After he pulled out, and was behind Hudson, Rankin claims that Hudson moved a little and then stopped and moved a little and then stopped. (Tr. 466.) Rankin testified that he could not turn off at the driveway to Pilson's because there was something blocking it. (Tr. 467.) He also claimed that another car was behind him. (Tr. 475.) Rankin stated that he tried to

speed up and go around, but that Hudson swerved or moved into the left lane. (Tr. 468, 470.) Only when there were no cars on the side of road anymore was he able to pass. (G.C. Ex. 16.)

Video shows Rankin exiting Rutledge at 11:35:40. (Er. Ex. 1 at 11:35:40.) A Huffmaster guard is in front of Rankin's truck and, after Hudson drives by, the guard escorts him through the picket line and onto 17<sup>th</sup> Street and some distance north. (Tr. 449.) Rankin's truck moves toward Hudson's back bumper to where he is a foot or two behind Hudson. (Tr. 450.)

Three Company witnesses testified to the incident. All were in the Rutledge facility, on the second floor, looking out their windows.

Tara Walters testified that Hudson and Rankin were "both going slow down the street," (Tr. 1032), and that Hudson "moved over" in front of Rankin's car when he tried to pass, (Tr. 1049). She did not see Hudson waiting for Rankin to pull out and did not see Hudson speed up to get in front of him. (Tr. 1031.) Additionally, the whole time Walters was watching, she did not see Hudson stop and start. (Tr. 1032.)

Jonell Rich testified that she saw Hudson in front of Rankin, driving very slowly, brakes on, stopping, and starting. (Tr. 1124.) She also saw Hudson "pull[] to the left" when Rankin tried to pass, but said that Hudson did not try to hit Rankin or "swerve" into him. (Tr. 1124, 1130-1132.)

A third witness, Bernice Dasenbrock testified that Hudson proceeded very slowly and veered to the left. (Tr. 1180.) She said that Rankin then took off around Hudson. (Tr. 1197.) Strangely, Dasenbrock testified that Hudson first stopped in front of Rankin for about one minute, as he was trying to exit Rutledge, preventing him from leaving. (Tr. 1186-1189.) However, the video shows Hudson's vehicle in motion the whole time. (Er. Ex. 1 at 11:35:50-11:36:17.)

**F. Eric Williamson**

**1. The Dawn Redfern Incident**

At around 5:00 p.m., on December 10, Dawn Redfern joined a caravan of cars leaving the Rutledge facility. (Tr. 983.) Huffmaster guards stood near the sides of the driveway, up to 17<sup>th</sup> Street, clearing space. (Er. Ex. 1 at 5:07:05.) Strikers stood along the driveway yelling and waving signs. (Er. Ex. 1 at 5:07:10; Tr. 985.)

Redfern turned right, exiting Rutledge. (Tr. 717.) Williamson was on the edge of the road, part on the grass, and part on the gravel shoulder. (Tr. 732-733.) Williamson testified that, as Redfern pulled out, the passenger side mirror on Redfern's car grazed a whistle hanging from his neck as well as grazing his chest. (Tr. 717.) Redfern stopped, rolled down her mirror, and said, "You fucking broke my mirror." (Tr. 717.) Williamson responded, "You hit me," and turned and walked away. (Tr. 717.)

Redfern testified that, after she made the turn, she heard a loud smack, and immediately stopped. (Tr. 987.) She rolled down the passenger window and noticed that her side mirror was folded in. (Tr. 987.) She testified that she said, you hit my car, (Tr. 987), and Williamson responded, “No, you hit me.” (Tr. 988.)

## **2. The Tara Walters Incident**

Williamson also picketed at Rutledge on December 11. (Tr. 712.) He recognized Tara Walters pulling into the facility that day. (Tr. 712.) When she parked, Williamson yelled “scab,” (Tr. 712-713, 716), and grabbed himself, (Tr. 1023).

Walters knows that an employee who is subjected to sexual harassment may go to a supervisor and complain. (Tr. 1040-1041, 1046.) Notwithstanding, Walters only filled out a report about the incident after a manager came to her several days later and asked her to fill one out. (Tr. 1025, 1041.)

## **G. The Discipline of the Discriminatees.**

The Company held a series of meetings with Maxwell, Hudson, Weaver, and Williamson on Thursday, December 13. (Er. Ex. 12.) Despite the Union’s prior request for information, (G.C. Ex. 11), the Company did not provide any documents at these meetings, such as Huffmaster Incident Reports. (Tr. 74, 90, 93, 217-218.) Nor did the Company show any of the video they had. (Tr. 375.)

Gary Patrem stated that Maxwell had impeded traffic, verbally harassed a driver, and “struck” a vehicle. (Tr. 75, 202; G.C. Ex. 12c.) Hughart and Beisner asked several questions, including whether the police were called. (Tr. 75-76.) Someone also told Patrem that Maxwell had been hit by the vehicle driven by Flood. (Tr. 194.)

Manager Sam Jurka said that Williamson was being suspended for two incidents, making an inappropriate gesture toward a female employee and intimidating another “by striking her vehicle.” (Tr. 97, 99; G.C. Ex. 13c.) Hughart told Jurka that the Chief of Police had mentioned the mirror incident to him and the Chief had said that there was no wrongdoing or no intention. (Tr. 119.) Jurka replied that the Company would investigate that. (Tr. 119.)

Patrem said that Hudson had multiple instances of intimidating and harassing Company employees in personal and Company vehicles and had “follow[ed] and torment[ed] our drivers.” (Tr. 88-89, 324; G.C. Ex. 17.) Hudson was stunned. (Tr. 795.) Hughart asked Anna Bright if she knew what ambulatory picketing was. (Tr. 90, 345.) Bright said she was not familiar with the term, but believed that Hudson was endangering other employees when she “followed cars” on a public road. (G.C. Ex. 23 at p. 3.)

Similar to Hudson, Patrem told Weaver that she was suspended for following and tormenting drivers in personal and company vehicles. (Tr. 91; G.C.



Ex. 18.) Weaver was shocked. (Tr. 597.)

The Company held a second set of meetings with the discriminatees a few days later. (G.C. Ex. 23.) The Company gave each packet of information, including a disciplinary memo, the Company's workplace violence policy, and some Huffmaster reports. (G.C. Exs. 12a, 13a, 13b, 14, 15, 16.)

At the start of Hudson's second meeting, Patrem slapped her discharge papers on the desk. (Tr. 106.) During the meeting, Beisner asked whether it was possible that Hudson and Weaver were leaving at the same time that Rankin and Greider were leaving, and Patrem said it was not really probable. (Tr. 119.)

Weaver's meeting started the same way – Patrem threw her discharge papers onto the desk. (Tr. 598.) Patrem said that Weaver acted as a “duo” with Hudson. (Tr. 110.) Some 20 minutes into the meeting, Patrem asked Weaver for her side of the story. (Tr. 111.) Beisner said, now you ask for her side of the store after you have decided to fire her. (Tr. 111.) Weaver said that if Greider claimed that she had followed her to Charleston, that she never saw Greider. (Tr. 111, 163-164.)

#### **H. The Company Eliminates Brenda Weaver's Position**

At the time of their termination, Weaver was a full-time Office Specialist in the Facilities Department and Hudson was a full-time Office Specialist in the Fleet Department. (Tr. 335, 632; G.C. Ex. 18 at ¶ 5.) Weaver's duties included coding of utility invoices, maintaining inventory of buildings, and entering Pcard data. (Jt.

Ex. 3 at p. 4; G.C. Ex. 22(b)) Hudson's duties included assisting drivers in scheduling maintenance, scheduling of pool car vehicles, and coding of fleet invoices. (Jt. Ex. 3 at p. 4.) They did not normally perform each other's duties. (Tr. 334, 632.)

On January 17, 2013, the Company posted an opening for an Office Specialist in the Fleet Department – i.e., Hudson's position. (G.C. Ex. 18 at ¶ 9.) On February 26, the Union was notified that the Company had selected someone – Heather Winkleblack – for the job and that the Company was not going to fill Weaver's position. (Tr. 168, 338.) Patrem had decided to do away with one of the jobs and assign Weaver's duties to the person taking Hudson's job. (Tr. 336-339.)

The first time the Company gave notice to the Union that it was re-assigning Weaver's duties was on February 26, when it informed the Union that it had selected Winkeblack to fill Hudson's position. (G.C. Ex. 18 at ¶ 11.) The Union immediately objected and sent a demand to bargain. (Tr. 339; G.C. Ex. 18 at ¶ 12; Jt. Ex. 2.) The Company never changed its position, and did not agree to reverse implementation of its decision pending bargaining. (Tr. 124.)

### **STANDARD OF REVIEW**

The Court's role in reviewing a NLRB decision is limited. The Court "must uphold the judgment of the Board unless, upon reviewing the record as a whole, we conclude that the Board's findings are not supported by substantial evidence, or

that Board acted arbitrarily or otherwise erred in applying established law to the facts of the case.” *Stephens Media, LLC v. NLRB*, 677 F.3d. 1241, 1250 (D.C. Cir. 2012). The Court will not reverse an ALJ’s credibility determinations unless they are “hopelessly incredible,” “self-contradictory,” or “patently unsupportable.” *Id.*

### **SUMMARY OF THE ARGUMENT**

Substantial evidence supports the Board’s finding that the Company violated Section 8(a)(3) of the Act by suspending Maxwell and Williamson and terminating Hudson for alleged strike misconduct. The Judge’s decision is based on credibility determinations and well-recognized case law. Consolidated seeks to retry the evidence by claiming that the Judge should have credited its witnesses. It is long past time to make these arguments. The ALJ considered the record as a whole, including the admitted facts, the consistency of witness testimony, and reports filed by employees and video taken by security guards, and properly credited the Union’s witnesses over the Company’s witnesses.

Substantial evidence also supports the Board’s finding that Consolidated eliminated Brenda Weaver’s position without giving the Union notice and the opportunity to bargain as required by the law. The facts are uncontested, and the Board’s decision follows accepted case law.

## ARGUMENT

**I. SUBSTANTIAL EVIDENCE SUPPORTS THE BOARD’S FINDING THAT CONSOLIDATED DISCIPLINED MAXWELL, HUDSON, AND WILLIAMSON FOR CONDUCT DURING THE STRIKE THAT EITHER DID NOT OCCUR OR WAS INSUFFICIENTLY EGREGIOUS FOR THEM TO LOSE THE PROTECTION OF THE ACT.**

**A. Consolidated seeks to reverse the Board’s adoption of the ALJ’s credibility determinations and retry the evidence contrary to D.C. Circuit precedent.**

This case is very simple. The Company accused each of the discriminatees of misconduct. In every instance, the ALJ set forth the appropriate legal standard, reviewed the evidence, and assessed the credibility of witnesses. With one exception, involving Williamson, he determined that the discriminatees did not, in fact, engage in the conduct that they were accused of. *Universal Truss, Inc.*, 348 NLRB 733, 734 (2006) (setting forth striker misconduct test). Consolidated takes issue with the ALJ’s findings. But, the mere fact that its witnesses gave different versions of events is not a basis for overturning the Board’s decision. Witnesses regularly contradict each other. It is the ALJ’s job to sort out the contradictions based on the entire record, which the ALJ did here.

**1. Mike Maxwell did not strike Flood’s van or block it.**

The stated basis for Maxwell’s discipline was that he struck Flood’s van, leaned on it for an extended period of time, and then verbally harassed the driver. Maxwell denied doing so. He claimed that Flood hit him. Moreover, the

Company's own witness, Frank Fetchak, admitted that Maxwell did not strike the vehicle, that Maxwell was moving, that Maxwell did not lean on the vehicle for very long, and that Maxwell may have leaned on the vehicle because Flood hit him. At most, the picketing delayed Flood's exit by 15 to 30 seconds. The Board has repeatedly held that such a short delay is not serious enough to lose the protection of the Act. *See Dresser-Rand Co.*, 358 NLRB No. 97 (2012) (action of striker laying on bumper would not reasonably coerce employees in exercise of rights); *Ornamental Iron Work*, 295 NLRB 473, 479 (1989) ("momentary, otherwise non-coercive blockage will fall within that form of mischief classified as "minor acts of misconduct" which have been in the contemplation of Congress when it provided for right to strike."); *Hotel Roanoke*, 293 NLRB 182, 217 (1989) (instance where employee patrolled slowly and occasionally stopped, which delayed traffic, not serious enough; "disruptions of ingress and egress is often associated with picketing and is the type of thing to be expected").

The Company contends that Maxwell mistakenly states that Flood's van took off like a "bat out of hell" while Fetchak testified that Flood was forced to stop the van at the picket line and slowly inch forward. (Brf. at 55.) This is not an inconsistency but witnesses talking about two different things. Maxwell's statement refers to when Flood left the garage. (Tr. 499.) He admitted that Flood was not driving that fast when he was hit. (Tr. 517.)

Even if the testimony of Union witnesses and Company witnesses diverge at some point, the ALJ was not required to resolve every doubt against the General Counsel. There was not a lack of evidence. The ALJ heard from both Maxwell and Fetchak. On this point, the Company's reliance on *Schreiber Mfg., Inc.* and *Axelson, Inc.* is misplaced. In those cases, the General Counsel presented no evidence, apart from the discredited testimony of disciplined employees, to negate the employer's showing of an honest belief of misconduct. *Schreiber Mfg., Inc.*, 725 F.2d 413, 416 (6<sup>th</sup> Cir. 1984); *Axelson, Inc.*, 285 NLRB 862, 864 (1987). But neither the Sixth Circuit nor the Board held that an ALJ must discredit the testimony of an employee witness that conflicts with the testimony of an employer witness. The ALJ may believe one over the other based on the record as a whole.

In fact, contrary to the Company's position, this Court has repeatedly rejected arguments by employers that Board findings are unsupported by substantial evidence because employee and employer witnesses testify differently about the same event. *See, e.g., Shamrock Foods Co. v. NLRB*, 346 F.3d 1130, 1138 (D.C. Cir. 2003) (substantial evidence supports Board decision where employee testified to incident even though manager denied it); *Vico Prods. Co. v. NLRB*, 333 F.3d 198, 209 (D.C. Cir. 2003) (rejecting arguments that Board's decision is not based on substantial evidence because manager Dearing denied making comment and employee Nitz's testimony is uncorroborated); *Traction*

*Wholesale Ctr. Co. v. NLRB*, 216 F.3d 92, 100 (D.C. Cir. 2000) (even though ALJ could have chosen to credit evidence supporting the employer's version of events, conclusion to the contrary is supported by substantial evidence). Furthermore, the Board has specifically disavowed the suggestion that the party with the burden of persuasion on an issue necessarily fails to meet its burden where there is conflicting testimony. *RC Aluminum Industries, Inc.*, 343 NLRB 939, n. 2 (2004). The ALJ was not required to discredit Maxwell, and properly found that he did not engage in misconduct based on the admitted facts and Fetchak's testimony.

**2. Hudson and Weaver did not trap vehicles or torment drivers.**

The Company claimed that Hudson and Weaver trapped vehicles on the picket line, impeded their progress, and followed and tormented drivers for up to several miles. Substantial evidence refutes this and shows that Hudson and Weaver did not engage in this alleged misconduct.

First, with regard to Greider, video shows that a Huffmaster guard placed Greider behind Hudson. There was no plan to trap her. Rather, Hudson was driving slowly because conditions demanded it – cars were parked on both sides of the street and people were crossing back and forth without warning. If anything, Greider overreacted to the situation.

Second, with regard to Conley, the evidence does not show that Weaver cut him off, that Hudson prevented him from passing, or that Weaver and Hudson

created a rolling blockade. Conley admitted that Weaver did not delay beside him, stated that she may have signaled when she pulled in front of him, and proceeded in front of him at a safe distance. This is not the type of dangerous driving that may intimidate employees. (Tr. 864, 877.) Conley also admitted that he did not need to slam on his breaks when Hudson switched lanes in front of him and that Hudson could have thought it was safe and that she could have had her blinker on. (Tr. 891-892.) In addition, Hudson and Weaver did not block Conley for “several miles.” They both testified that Hudson passed Conley around the Hospital. Conley, other the hand, could not recall for how long he was behind Hudson, (Tr. 888), and momentarily forget on cross-examination that Hudson allegedly cut him off, (Tr. 889-890). Diggs additionally admitted that Hudson and Weaver could have been driving the speed limit. It appears that Conley wanted to drive faster, as at one point he was driving 69 mph, which is at least 14 mph over the speed limit. (Tr. 322, 583-584.) But, Conley’s speeding is not something that Hudson and Weaver can be blamed for.

There is, in fact, a simple explanation for the Conley incident. When Weaver passed Conley, Hudson did not know what Weaver was doing. They had not planned to follow Conley and had no way to communicate with each other. At that point, rather than fall behind, Hudson followed Weaver around Conley. The Company sees some nefarious plan in this. But, the innocent explanation makes



more sense. Once Conley turned off the road, Hudson and Weaver both explained that it was too hard to follow them. They would have had to make a quick u-turn, cross oncoming traffic, and then speed up to catch Conley. So, instead, they headed back to Corporate, where they had been planning to go.

Third, with regard to Rankin, substantial evidence supports the Board's finding that Hudson did not trap him or move toward him. There is no doubt that Hudson was driving slowly. As in the Greider situation, there were picketers all around and 17<sup>th</sup> Street had been reduced to one lane combined. The Company argues that Hudson did not see anyone in front of her. But, this is not the point. She was driving slowly and toward the middle of the road because of what she could not see. The comparison is to a grocery store parking lot. You drive slowly because someone may pull out in front of you, not simply when you see someone pulling out.

In each incident, Company witnesses gave alternative versions of events. But, there are good reasons to discredit them. The video contradicts the Company's belief that Hudson and Weaver purposely trapped Greider. The guard put Greider behind Hudson. And, the video does not show Hudson stopping and starting. The Company relies on Rich's testimony; but, as the ALJ noted, her testimony changed over time, from saying that she did not know whether Hudson came to a stop to saying that Hudson had stopped. As for the Conley incident,

Hudson and Weaver consistently testified to what they were doing, where they were when they passed him, and how fast they were going. Conley, on the other hand, backed down from claims that Weaver or Hudson cut in front of him. Diggs further stated there was at least a car length's distance between Conley and Hudson and there was no danger of Conley hitting Hudson's car.

The Company's witnesses to the Rankin incident are equally unreliable. Rankin claimed that Hudson was laying in wait for him, that she stopped at one point, that the driveway into Pilson's was blocked, and that a car was behind him. None of this is true. Walters said that Hudson was not starting and stopping, that she did not see any car behind Rankin, and that the Pilson's driveway was not blocked. (Tr. 1032, 1034-1035, 1051.) The video shows Hudson moving at all times. (Er. Ex. 1 at 11:35:43-11:36:17.)

The Company's witnesses also contradicted each other. Walters testified hesitantly, stating that Hudson moved over as Rankin tried to pass. (Tr. 1028.) While Rich testified that Hudson pulled to the left, she also said that Hudson did not swerve into or try to hit Rankin. (Tr. 1124, 1130-1131.) Dasenbrock was completely incredible. She claimed that Hudson sat parked by the driveway, blocking the exit. (Tr. 1186-1189.) The video absolutely refutes this. Rankin, for the matter, did not even write in his incident report that Hudson swerved. You would think that he would have included this point.

The Company's mistaken beliefs as to what Hudson and Weaver did are also damning. Among other things, Company representatives believed that Weaver and Hudson had followed her past the Mall, even though Greider would not have told Patrem that she was followed if she was asked. (Tr. 289-290, 292, 304, 1076-1077.) The Company also had the general understanding that picketers were motioning to Hudson, though Greider testified that she did not see anyone signaling to her. (Tr. 294, 1073.) And, Patrem and Whitlock believed that Weaver was blocking Rankin from behind, when in fact she was in Hudson's car. (Tr. 238, 242, 444, 452.)

The Company contends that the Board impermissibly shifted the burden of proof against it, citing a portion of one sentence at the end of the ALJ's decision about any ambiguity as to Hudson's misconduct. This is grasping at straws. There is no doubt that, as a whole, the ALJ believed Hudson's version of events. His statement about "any ambiguity" simply confirms that he is not required to discredit Hudson even though Conley's testimony conflict with hers on some points. The Company also ignores the 13 previous pages of the decision. The ALJ followed the accepted framework for analyzing striker misconduct, cited *Universal Truss* and other relevant cases, and stated that the General Counsel has "the burden of proving that the misconduct did not occur or was insufficiently egregious to forfeit the protection of the Act." (Bd. Order at p. 3.) In the entire context of the

Judge's analysis, it is clear that he applied the correct standard. *See Shamrock Foods Co.*, 346 F.3d at 1130 (ALJ properly assigned the burden of proof when he stated the proper standard; ALJ did not effectively shift the burden of proof on the company by basing his decision on his disbelief of company witnesses, when he also relied on testimony of employee witnesses denying the alleged misconduct).

The Company offers various arguments for why its witnesses are more credible than Hudson and Weaver. It contends that Diggs did not know the speed limit, so could not have known that Hudson and Weaver were not possibly driving speed limit. It argues that none of the testimony given by Rich, Walters, and Dasenbrock on the Rankin incident is materially inconsistent. And, it claims that the ALJ should have relied on Rich's testimony that Hudson barely moved in front of Greider. But, as set forth above, there was ample evidence in the record by which the Board could believe Hudson and Weaver over these witnesses.

The Company's arguments are challenges to credibility. As this Court has held: "We do not retry the evidence. 'Credibility of witnesses is a matter for Board determination, and not for this court.'" *Vico Prod. Co.*, 333 F.3d at 209 (citing *Joy Silk Mills v. NLRB*, 185 F.2d 732, 741 (D.C. Cir. 1950)). The parties spent six days at trial in a nondescript conference room in Mattoon, Illinois. The ALJ had the opportunity to observe the witnesses and closely follow their testimony. The Court should defer to and not second-guess his judgment.

The Company claims that that the Board disregarded evidence in the record that fairly detracted from its determinations. This is incorrect. The Board in some instances credited Company witnesses over Hudson and Weaver. For example, the ALJ credited Conley that at some point he was in the left lane on Route 16 behind Hudson. Put another way, the Company would have the Court find the Board's findings unsupported by substantial evidence because the Board did not credit Company witnesses over Union witnesses in all material instances. This is not the test. Rather, the Company must show that the ALJ's credibility determinations are "hopelessly incredible," "self-contradictory," or "patently unsupportable."

*Shamrock Foods Co.*, 346 F.3d at 1133. The Company fails to meet this high standard.<sup>2</sup>

Finally, the Company argues that the ALJ failed to consider surrounding circumstances. It claims that Hudson was blocking the roadway at other times on December 10. But, the record demonstrates the opposite. The video shows, in one instance, Hudson (in a white jacket and black scarf) moving to the side of the driveway, in compliance with a direction from the Chief, so that a Huffmaster

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<sup>2</sup> The Company argues that the ALJ erred in finding that Conley was biased because he was a manager, that he was angry, and that he gave self-serving testimony. However, the Board stated that it was unnecessary to rely on the judge's speculation as to what motivated Conley. (Board Order at n. 2.) In this regard, the Court should take the Company's claim that Hudson's testimony is self-serving with a grain of salt. If managers do not shade their testimony to assist their bosses, then the Company cannot claim that employees shade their testimony to win their jobs back.

guard may direct a car into the Rutledge facility. (Er. Ex. 1 at 10:18:26-10:18:43.)

In another instance, the video shows Hudson standing near the side of 17<sup>th</sup> Street with other picketers and a car drives by slowly without stopping. (Er. Ex. 1 at 11:30:26 – 11:30:50.) In no event was traffic blocked. Moreover, Huffmaster guards and police officers were present at this time and did not accuse Hudson of misconduct.

**3. Williamson did not intentionally hit Redfern's mirror and his gesture toward Walters was not so serious as to lose the protection of the Act.**

Williamson was suspended in part because the Company believed that he intentionally hit Redfern's mirror. However, the evidence refutes this. He was standing near the side of the road. Redfern did not see Williamson hit the mirror and there was no damage. (Tr. 1004; G.C. Ex. 13b.) If management had asked, she would have said the contact could have been accidental. (Tr. 1011.)

In *Meditate of New Mexico, Inc.*, 314 NLRB 1145 (1994), *aff'd* 72 F.3d 780 (10th Cir. 1995), that Board held that hitting a car with a cardboard picket sign does not amount to the type of serious conduct that would intimidate nonstriking employees from crossing a picket line. The Board noted that the incident was fleeting and did not damage the car. The same reasoning applies here. Williamson briefly came in contact with Redfern's car and did not cause any damage. Given the tight turn, it is not surprising that such an accident occurred.

Respondent attempts to turn the issue into whether Williamson intentionally approached the vehicle. This is a red herring. Picketers have a right to communicate their views. This right does not become misconduct simply because a minor accident occurs. During strikes, there may be “trivial rough incidents” and a picketer may engage in a “moment of animal exuberance.” *Hotel Roanoke*, 293 NLRB at 207 (citing *Milk Wagon Drivers Union v. Meadowmoor Dairies*, 312 U.S. 287, 293 (1941)). “[M]inor breaches of the peace adjacent to picket line ordinarily are tolerated as the inevitable concomitant of the right to strike.” *Chevron U.S.A., Inc. v. NLRB*, 672 F.2d 359, 360 (3d Cir. 1982).

The cases cited by the Company all involve more serious misconduct. In *GSM, Inc.*, 284 NLRB 174 (1987), the employees intentionally kicked and assaulted vehicles. And, in *Calmat*, 326 NLRB 130 (1998), the employee put himself in the way of a truck and then slapped his picket sign against the vehicle, jumped on the running board, and pulled open the driver’s side door.

Respondent insinuates that Williamson is a hot head. But, the Company did not fire Williamson for blocking other cars. Additionally, this type of evidence, which the Union objected to, is irrelevant to what happened – a minor breach of the peace. Finally, Williamson did not act like a hot head. When Redfern stopped and tried to engage him in an argument, he walked away.

With regard to the Walters incident, the evidence shows that Williamson made a crude gesture toward her. But, this does not mean the Company could fire him for it. The Board has repeatedly held that offensive behavior, while not condoned, is not serious enough to lose the protection of the Act. *See, e.g., Airo Die Casting, Inc.*, 347 NLRB 810 (2006) (while repulsive and offensive, striker did not lose protection of the Act when he extended middle finger and yelled, “fuck you nigger”); *Calliope Designs, Inc.*, 297 NLRB 510, 527 (1989) (calling a nonstriker a “whore” is not serious misconduct). The fact that Walters did not immediately report the incident, but had to be prompted to, further shows that it was not serious.

**B. The Company’s arguments that Hudson was not engaged in strike activity, that the ALJ imposed a violence standard, and that ALJ created a duty to call the police and to escape mischaracterize the Board’s Decision and do not negate the ALJ’s credibility determinations.**

The Company spends the first portion of its brief arguing that Hudson’s conduct, with regard to Conley, was not associated with a strike. This is an attempt to rewrite the Company’s own understanding of events. It’s also wrong as a matter of law.

First, the Company’s claim at the first set of meetings was that Hudson and Weaver had threatened Conley by following him. Company representatives never parsed the employees’ conduct into lawful parts and unlawful parts, between when



they were behind Conley and when they were in front of him. Rather, they considered the entire incident as grounds for termination. This is exemplified by Anna Bright's statement, in response to Hughart's question about ambulatory picketing, that Hudson endangered other employees when she "followed cars" on a public road. (G.C. Ex. 23 at p. 3.)

Second, the Company misstates the law. The right to strike does not depend on proximity to a picket line. For example, employees have the right to buy billboards near interstates, hold rallies in public places, and handbill customers. They also have the right to engage in ambulatory picketing. *Teamsters, Local Union No. 807*, 87 NLRB 502 (1949). Employees do not lose these rights if they wonder away. Along these lines, the Board does not judge ambulatory picketing based on the position of an employee's vehicle at any particular moment. Employees do not lose the protection of the Act when they pass a Company vehicle and then regain it when they pull back behind the vehicle. (For that matter, do employees lose the protection of the Act if they inch slightly ahead of a company vehicle, but not completely in front?) The Company's focus on the position of Hudson's car at any one moment creates a false dichotomy. The issue is what were Hudson and Weaver doing, not whether Hudson or Weaver were in front of Conley for a short time.

The Company next argues that the ALJ imposed a violence requirement. As noted by the Board in its Brief, the employees were disciplined for violations of the Company's workplace violence policy, which prohibits any "acts or threats of violence." (G.C. Ex. 16.) In this context, the ALJ was right to consider whether the employees in fact committed any act or threat of violence. Additionally, the Company mischaracterizes the decision. The Judge stated that instances where the Board has found that strikers have lost the protection of the Act "in almost all cases involve violent acts or threats of violent acts." (Board Order at 13.) This is true. In almost all cases, there is violence or a threat of violence. *See Hotel Roanoke*, 293 NLRB at 207 (noting that striker steps over the line when he engages in "threats of physical violence, actual physical violence or property damage").<sup>3</sup>

The Company cites several Section 8(b)(1) cases against unions in support of its claim that a violence requirement contradicts the law. (Brf. at 33.) Again, this is a strawman. The Board did not impose such a requirement. In addition, these cases are not on point. First, they do not, for the most part, delve into whether any particular employee engaged in misconduct. Instead, they ask whether a union is responsible for threats and mass picketing by strikers, if the

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<sup>3</sup> The Company also claims that the ALJ showed bias by stating that strike lines are "supposed" to be intimidating. (Brf. at p. 30.) This is not what the Judge said. Rather, the Judge posed a question to counsel: "I guess one question I have, isn't a picket line supposed to be somewhat intimidating in general?" (Tr. 150.) The Judge also noted that with a picket line, "you're trying discourage people from crossing. I mean if the picket line wasn't there, they'd drive in." (Tr. 150.)

union knows of the acts and fails to disavow them. Here, though, there was nothing to disavow. Hudson, Weaver, and Maxwell did not engage in the conduct with which they were charged, and Williamson did not engage in serious misconduct. Second, the cases do not hold, as the Company claims, that efforts by a striker to impede progress are unlawful. For example, in *Service Employees Int'l Union Local 525*, 329 NLRB 638 (1999), the Board agreed that the Union did not violate the Act by allegedly blocking an employee from crossing a picket line and entering a building, where “the entire episode could not have taken more than a few minutes” and even assuming the incident qualified as blocking, “it was momentary and noncoercive, amounting to an inconsequential act of misconduct.” *Id.* at 638 & 655.

Lastly, the Company contends that the ALJ imposed a duty to escape and to call the police. This misconstrues the analysis in the decision. The Board did not hold that Company managers were required to escape or call the police. Rather, the ALJ found their failure to take such action relevant to their credibility.

With regard to Conley, an important factor in determining whether he was truly trapped is when Hudson pulled in front of him and slowed. The fact that Conley did not turn off the highway earlier suggests that Hudson was not in front of him for that long. Likewise, Rankin claimed that he could not turn off at Pilson's because the entrance was blocked, (Tr. 467), and that he did not turn off

elsewhere because someone could have pulled behind him, (Tr. 482). This testimony is not true. Rankin's explanations for why he could not take other action are really fabrications to attempt to justify his reckless driving.

As for calling the police, it is undisputed that the Huffmaster security distributed procedures to non-strikers with specific instructions to "contact the local police department and Huffmaster security personnel for instructions" if they encountered any problems during the course of the day and to "[d]rive directly to the nearest police facility or return to company property, if it is closer" if they were followed. (G.C. Ex. 21.) Along these lines, Company representative Mike Croy was on the phone multiple times Monday morning with Chief Branson asking him to do something about the picketing in front of Rutledge. Yet, despite the procedures and Croy's communications with the Chief, the Company did not notify the police about any of the incidents in question. This undercuts the claim that the incidents were really that serious.

**II. SUBSTANTIAL EVIDENCE SUPPORTS THE BOARD'S FINDING THAT CONOSOLIDATED ELIMINATED A BARGAINING-UNIT POSITION WITHOUT NOTIFYING OR BARGAINING WITH LOCAL 702.**

The Company makes little attempt to challenge the Board's finding that it violated Section 8(a)(5) when it re-assigned Weaver's job duties and effectively eliminated her job. It does not contest the facts and does not set forth any contrary Board law. Rather, it simply claims that the Board did not articulate any evidence

nor give any reasoning in support of the violation. As the Board notes in its Brief, this is simply incorrect. The Board cited the relevant facts, explained the Company's duty to bargain with the Union before implementing its decision, and cited applicable case law. (Board Order at n. 3.) This simple violation did not require any more findings or reasoning and was clearly established on the record.

### **CONCLUSION**

For the foregoing reasons, the Union respectfully requests the Court to deny the Company's petition to review and to enforce the Board's Order.

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**UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

CONSOLIDATED COMMUNICATIONS	)	
d/b/a ILLINOIS CONSOLIDATED	)	
TELEPHONE COMPANY	)	
	)	
Petitioner/Cross-Respondent	)	Nos. 14-1135
	)	14-1140
v.	)	
	)	
NATIONAL LABOR RELATIONS BOARD	)	
	)	
Respondent/Cross-Petitioner	)	
	)	
INTERNATIONAL BROTHERHOOD OF	)	
ELECTRICAL WORKERS, AFL-CIO,	)	
LOCAL 702	)	
	)	
Intervenor	)	

**CERTIFICATE OF COMPLIANCE**

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), the Union certifies that its brief contains 8,744 words of proportionally spaced, 14-point typeface, using Microsoft Word.

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v.	)	
	)	
NATIONAL LABOR RELATIONS BOARD	)	
	)	
Respondent/Cross-Petitioner	)	
	)	
INTERNATIONAL BROTHERHOOD OF	)	
ELECTRICAL WORKERS, AFL-CIO,	)	
LOCAL 702	)	
	)	
Intervenor	)	

**CERTIFICATE OF SERVICE**

I hereby certify that on the 18<sup>th</sup> of May, 2015, the foregoing was filed with the Clerk of the United States Court of Appeals for the District of Columbia Circuit using the CM/ECF system, which will send notification on all parties.

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